

THE HONORABLE BENJAMIN H. SETTLE

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
IN TACOMA

UNITED STATES OF AMERICA, for
the use and benefit TOTEM
ELECTRIC OF TACOMA, INC., a
Washington Corporation,

Plaintiff,

v.

LIBERTY MUTUAL INSURANCE
COMPANY, a foreign insurance
company; FIDELITY AND DEPOSIT
COMPANY OF
MARYLAND/ZURICH AMERICAN
INSURANCE COMPANY, a foreign
insurance company; and
CONTINENTAL CASUALTY
COMPANY, a foreign insurance
company,

Defendants.

CASE NO: 3:18-cv-06047

JOINT STIPULATION AND ORDER
TO CONSOLIDATE RELATED
ACTIONS

Assigned to: Hon. Benjamin H. Settle

/ / /

1 Plaintiff, Defendant, and Cross-Defendant Totem Electric of Tacoma
2 (“Totem”), Defendant Travelers Casualty and Surety Company of America
3 (“Travelers”), Plaintiff, Defendant, and Cross-Claimant RQ Construction, LLC
4 (“RQ”), Defendant Liberty Mutual Insurance Company (“Liberty”), Defendant
5 Fidelity and Deposit Company of Maryland (“F&D”), Defendant Zurich and Deposit
6 Company of Maryland (“Zurich”), Defendant Continental Casualty Company
7 (“Continental”), and Plaintiff System Tech Washington, Inc. (“STI”) hereby
8 stipulate and agree through their attorneys to be bound by the terms and provisions
9 of this Stipulation as follows:

10 **RECITALS**

11
12 A. On December 26, 2018, The United States of America, for the use and
13 Benefit of Totem commenced an action in the United States District Court Western
14 District of Washington in Tacoma entitled *The United States of America, for the use*
15 *and Benefit of Totem Electric of Tacoma, Inc. v. Liberty Mutual Insurance Company,*
16 *et al.*, Case No. 3:18-cv-06047-BHS, wherein Liberty, F&D, Zurich, and
17 Continental (collectively, “RQ’s Co-Sureties”) were named as defendants (the
18 “Original Action”).

19 B. On January 3, 2019, The United States of America, for the use and
20 Benefit of STI commenced an action in the United States District Court Western
21 District of Washington in Tacoma entitled *The United States of America, for the use*
22 *and Benefit of System Tech Washington, Inc. and System Tech Washington, Inc. v.*
23 *Totem Electric of Tacoma, Inc., et al.*, Case No. 3:19-cv-05006-BHS, wherein
24 Totem, Travelers, RQ, and RQ’s Co-Sureties were named as defendants (“Related
25 Action No. 1”).

26 / / /

27 / / /

28 / / /

1 C. On January 10, 2019, RQ commenced an action in the United States
2 District Court Western District of Washington in Tacoma entitled *RQ Construction,*
3 *LLC v. Totem Electric of Tacoma, Inc. and Travelers Casualty and Surety Company*
4 *of America*, Case No. 3:19-cv-05031-BHS, wherein Totem and Travelers were
5 named as defendants (“Related Action No. 2”).

6 D. On January 18, 2019, Totem amended the Original Action by naming
7 RQ as defendant and adding related causes of action against RQ.

8 E. On January 22, 2019, RQ filed a cross-claim against Totem and
9 Travelers in Related Action No. 1.

10 F. The Original action, Related Action No. 1, and Related Action No. 2,
11 collectively the “Actions,” relate to the contract and Miller Act claims arising out of
12 the construction of a certain facilities and buildings at Joint Base Lewis-McCord in
13 Washington (the “Project”). RQ was the general contractor for the Project and
14 Totem was subcontracted to perform certain electrical and low-voltage work for the
15 Project. Totem subcontracted with STI to perform certain portions of the low-
16 voltage telecommunications work. Travelers furnished payment and performance
17 bonds for Totem’s work and performance of the subcontract. RQ’s Co-Sureties
18 furnished payment bonds for the Project.

19 G. The consolidation of the Actions would streamline the issues, avoid
20 unnecessary costs and delays, and advance the interest of judicial economy.
21 Therefore, the Parties, without waiver of any Party’s claims, rights or defenses, wish
22 to consolidate the Actions into a single proceeding (the “Consolidated Action”).

23 H. All Parties to the Actions are actively engaged in mediation
24 negotiations and agree that additional time to engage in the mediation process
25 would be beneficial. As such, the Parties agree that the chances of settlement would
26 be promoted if Joint Status Report and Discovery Plan as required by FRCP 26(f)
27 and Local Civil Rule 26(f) and the related deadlines for the FRCP 26(f) Conference
28

1 and Initial Disclosures pursuant to FRCP 26(a)(1) from the Original Action are
2 maintained (Case 3:18-cv-06047, ECF No. 13).

3 I. All Parties to the Actions are represented in this Stipulation.

4 **STIPULATION**

5 NOW THEREFORE, it is agreed and stipulated by the Parties, subject to the
6 Court's approval, as follows:

7 1. The Actions are hereby consolidated for all purposes under Case No.
8 3:18-cv-06047-BHS.

9 2. All trials and other deadlines in Cases Nos. 3:19-cv-05006-BHS and
10 3:19-cv-05031-BHS are vacated.

11
12 DATE: March 6, 2019

Respectfully submitted,

14 OLES MORRISON RINKER & BAKER LLP

15 By: s/ J. Craig Rusk
16 J. Craig Rusk, WSBA 15872

17 By: s/ Ashley J. Sherwood
18 Ashley J. Sherwood, WSBA 46885
19 701 Pike Street, Suite 1700
20 Seattle, Washington 98101-3930
21 Telephone: (206) 623-3427
22 Facsimile: (206) 682-6234
23 Email: rusk@oles.com

sherwood@oles.com
*Attorney for Plaintiff, Defendant, and Cross-
Defendant Totem Electric of Tacoma, Inc.*

24 / / /

25 / / /

26 / / /

27 / / /

1 DATE: March 6, 2019

Respectfully submitted,

2 HARRIGAN LEYH FARMER & THOMSEN
3 LLP

4 By: s/ Timothy G. Leyh

5 Timothy G. Leyh, WSBA #14853

6 999 Third Avenue, Suite 4400

7 Seattle, Washington 98104

8 Telephone: (206) 623-1700

9 Facsimile: (206) 623-8717

10 Email: timl@harriganleyh.com

11 *Attorney for Defendant, Cross-Claimant, and*
12 *Plaintiff RQ Construction, LLC; and*
13 *Defendants Continental Casualty Company;*
14 *Fidelity and Deposit Company of Maryland;*
15 *Liberty Mutual Insurance Company; and*
16 *Zurich and Deposit Company of Maryland*

17 DATE: March 6, 2019

Respectfully submitted,

18 FINCH, THORNTON & BAIRD, LLP

19 By: s/ Jeffrey B. Baird

20 Jeffrey B. Baird, CSB #199280

21 Scott P. Leimgruber, CSB #316354

22 4747 Executive Drive – Suite 700

23 San Diego, California 92121-3107

24 Telephone: (858) 737-3100

25 Facsimile: (858) 737-3101

26 Email: jbaird@ftblaw.com

27 spleimgruber@ftblaw.com

28 *Attorney for Defendant, Cross-Claimant, and*
Plaintiff RQ Construction, LLC; and
Defendants Continental Casualty Company;
Fidelity and Deposit Company of Maryland;
Liberty Mutual Insurance Company; and
Zurich and Deposit Company of Maryland

29 / / / / /

30 / / / / /

31 / / / / /

1 DATE: March 6, 2019

WILLIAMS, KASTNER & GIBBS PLLC

2 By: s/ Todd W. Blischke

3 Todd W. Blischke, WSBA #42474

4 By: s/ Meredith E. Dishaw

5 Meredith E. Dishaw, WSBA #43206

6 601 Union Street, Suite 4100

7 Seattle, Washington 98101-2380

8 Telephone: (206) 628-6600

9 Facsimile: (206) 628-6611

10 Email: blischke@williamskastner.com

11 mdishaw@williamskastner.com

12 *Attorney for Defendant and Cross-Defendant*
13 *Travelers Casualty and Surety Company of*
14 *America*

15 DATE: March 6, 2019

AHLERS CRESSMAN & SLEIGHT PLLC

16 By: s/ Lindsay T. Watkins

17 Lindsay T. Watkins, WSBA #43012

18 999 3rd Avenue, #3800

19 Seattle, Washington 98104

20 Telephone: (206) 287-9900

21 Facsimile: (206) 287-9902

22 Email: Lindsay.Watkins@acslawyers.com

23 *Attorney for Plaintiff System Tech*
24 *Washington, Inc.*

25 1631.029/3EJ2935.ceb

1 CERTIFICATE OF SERVICE

2 The undersigned hereby certifies that this document has been filed
3 electronically on this 6th day of March 2019 and is available for viewing and
4 downloading to the ECF registered counsel of record:

5 Via Electronic Service/ECF:

6
7 Lindsay T. Watkins, Esq.
8 Ahlers Cressman & Sleight PLLC
9 999 Third Avenue, Suite 3800
10 Seattle, Washington 98104
11 Telephone: (206) 287-9900
12 Facsimile: (206) 287-9902
13 Email: lindsay.watkins@acslawyers.com

ATTORNEYS FOR PLAINTIFF
SYSTEM TECH WASHINGTON,
INC.

14 Timothy G. Leyh, WSBA #14853
15 Harrigan Leyh Farmer & Thomsen LLP
16 999 Third Avenue, Suite 4400
17 Seattle, Washington 98104
18 Telephone: (206) 623-1700
19 Facsimile: (206) 623-8717
20 Email: timl@harriganleyh.com

ATTORNEYS FOR DEFENDANT,
CROSS-CLAIMANT, AND
PLAINTIFF RQ CONSTRUCTION,
LLC; AND DEFENDANTS
CONTINENTAL CASUALTY
COMPANY; FIDELITY AND
DEPOSIT COMPANY OF
MARYLAND; LIBERTY MUTUAL
INSURANCE COMPANY; AND
ZURICH AND DEPOSIT COMPANY
OF MARYLAND

21 Jeffrey B. Baird, CSB #199280
22 Scott P. Leimgruber, CSB #316354
23 Finch, Thornton & Baird, LLP
24 4747 Executive Drive, Suite 700
25 San Diego, California 92121-3107
26 Telephone: (858) 737-3100
27 Facsimile: (858) 737-3101
28 Email: jbbaird@ftblaw.com
spleimgruber@ftblaw.com

ATTORNEY FOR DEFENDANT,
CROSS-CLAIMANT, AND
PLAINTIFF RQ CONSTRUCTION,
LLC; AND DEFENDANTS
CONTINENTAL CASUALTY
COMPANY; FIDELITY AND
DEPOSIT COMPANY OF
MARYLAND; LIBERTY MUTUAL
INSURANCE COMPANY; AND
ZURICH AND DEPOSIT COMPANY
OF MARYLAND

1 Todd W. Blischke, WSBA #42474
2 Meredith E. Dishaw, WSBA #43206
3 Williams, Kastner & Gibbs PLLC
4 601 Union Street, Suite 4100
5 Seattle, Washington 98101-2380
6 Telephone: (206) 628-6600
7 Facsimile: (206) 628-6611
8 Email: blischke@williamskastner.com
9 mdishaw@williamskastner.com

ATTORNEYS FOR DEFENDANT
AND CROSS-DEFENDANT
TRAVELERS CASUALTY AND
SURETY COMPANY OF AMERICA

10
11 DATED: March 13, 2019 in Seattle, Washington.

12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
s/ Catherine A. Trimbour
Catherine A. Trimbour

ORDER

The Court, having reviewed the foregoing Stipulation of the Parties, and good cause appearing therefore, IT IS ORDERED that, pursuant to Rule 42, the Parties' stipulation is adopted, and the following United States District Court Western District of Washington in Tacoma actions are consolidated for all purposes into one action:

1. *The United States of America, for the use and Benefit of Totem Electric of Tacoma, Inc. v. Liberty Mutual Insurance Company, et al.*, Case No. 3:18-cv-06047-BHS;
2. *The United States of America, for the use and Benefit of System Tech Washington, Inc. and System Tech Washington, Inc. v. Totem Electric of Tacoma, Inc., et al.*; Case No. 3:19-cv-05006-BHS; and
3. *RQ Construction, LLC v. Totem Electric of Tacoma, Inc. and Travelers Casualty and Surety Company of America*, Case No. 3:19-cv-05031-BHS;

IT IS FURTHER ORDERED that the Case No. 3:19-cv-05006-BHS and Case No. 3:19-cv-05031-BHS are hereby consolidated for all purposes under Case No. 3:18-cv-06047-BHS. All trials and other deadlines in Cases Nos. 3:19-cv-05006-BHS and 3:19-cv-05031-BHS are vacated.

IT IS SO ORDERED.

Dated this 13th day of March, 2019.



BENJAMIN H. SETTLE
United States District Judge